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**EN**

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**THE RIGHTS OF INTERNALLY DISPLACED PERSONS (IDPS) – THE UKRAINIAN CASE**

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# **The legal situation of internally displaced persons (IDPs)**

The term "internally displaced persons" (IDPs) is used to describe persons or groups of persons who have been forced to flee their homes or places of habitual residence, in particular in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally-recognised State border. Therefore, contrary to refugees, they remain within their countries’ borders and they are not covered by national or international regulations on refugees, despite the fact that the challenges they have to face are often very similar for both groups.

The main difference between the protection of refugees and that of IDPs is that governments’ responsibility is different in each case. When a refugee crosses an internationally-recognised State border, the country of his/her origin is no longer obliged to protect him/her. In turn, an internally displaced person remains within the borders of a country that is formally obliged to protect him/her, even if the government is indeed incapable of affording such protection.

Despite the fact that IDPs are not protected by international refugee law, they are always afforded protection by international human rights law, international humanitarian law and, obviously, national law. Furthermore, the need to protect IDPs against discrimination resulted in the adoption of the Guiding Principles on Internal Displacement by the UN. Unlike the Convention relating to the Status of Refugees, the Guiding Principles are not legally binding and they are considered soft law. Nevertheless, they are viewed as a recognised code of good practice and are taken into account by the public administration when drafting national provisions on the protection of IDPs on its own territory. A principle providing that such provisions shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, or any other similar criteria, is a particularly widely recognised one. The Guidelines are a soft law instrument, thus they do not include provisions for sanctions and no one can be held responsible for failing to comply with them. However, since they are soft law they did not have to be ratified in a long and exacting process and the principles contained therein are, in any case, widely recognised and implemented in national laws.

In Ukraine, the legal status of internally displaced persons is generally governed by the provisions of national administrative law, which had to be adapted to the new situation arising from the Russian annexation of Crimea and Sevastopol, and from the destabilisation of some areas in the Donetsk and Luhansk regions.

# **The reason behind internal displacements in Ukraine and their context**

The conflict in Ukraine has forced hundreds of thousands of people to abandon their homes and seek refuge elsewhere. People’s decisions to change their place of residence and to either stay in Ukraine or to go abroad were motivated, primarily, by the Russian annexation of the Crimean Peninsula and, secondarily, by the so-called "declaration of independence" of the "Donetsk People’s Republic" and the "Luhansk People’s Republic", and the upsurge in fighting in eastern Ukraine that occurred mid-2014. These factors combined contributed to a drastic increase in the number of IDPs. It is hard to estimate their exact number (not including the refugees who preferred to flee to Russia); official estimates suggest that nearly 2 million people might have been displaced. People decide to abandon their homes, seek refugee elsewhere and then return to their areas of origin or stay permanently where they are for a number of reasons, these being often very individual reasons. Generally, they are motivated by a combination of economic and political considerations. Fear of persecutions is the primary cause of fleeing Crimea, where no fighting took place, whereas the need to be physically safe is the most common reason behind fleeing the south-eastern regions.

The conflict in eastern Ukraine has been ongoing for three years, yet access to shelter, services, water, food and other resources, necessary for survival, still proves to be a major problem. The fragile, and repeatedly violated, ceasefire agreements, as well as the incidents of artillery fire, expose populations to permanent danger, especially where people live close to the dividing lines and in areas that are not controlled by the government.

Fighting in eastern Ukraine, which now continues just within the territories of the Donetsk and Luhansk regions as a result of the Ukrainian authorities’ determination and their decisive actions, caused hundreds of thousands of people to flee in order to save lives, as their homes and property had been destroyed. However, uncertainty as to what would happen tomorrow, within the territories controlled by the Russian separatists, also constituted an important factor. Local entrepreneurs, social and political activists, as well as intellectuals were concerned about both the progressive restrictions on their activities and the risk of losing their lives. Permanent problems relating to the availability of basic food products and medications, as well as electricity, gas and drinking water supply disruptions, also made people more eager to leave. Those forced to flee settled down primarily in the Ukrainian-controlled parts of the Donetsk and Luhansk regions. Western Ukraine is the most commonly chosen destination among younger generations who then decide to resettle permanently.

Estimates on the number of IDPs arouse conflicting feelings. Some analysts assert that the figures are underestimated, as only those who hold documents showing that they fled a conflict zone are registered. Due to the fact that the holders of such papers only receive token allowances, which are offered for just six months, the burdensome process of applying for these documents seems pointless. It may be that some IDPs decide to return to the conflict zones because their allowances are so low. There is also evidence that some people actually live in the areas controlled by the rebels and only visit the free territory to collect their old-age pensions and/or social security allowances. This might be attributed to the fact that people from occupied territories, who have failed to register as IDPs, are no longer able to collect their Ukrainian old-age pensions. Anyway, the Ukrainian banks within these territories have been closed, thus it is not possible to collect Ukrainian benefits therein, both from the legal and the technical point of view.

Tatars make up another category of IDPs; they flee from Crimea due to the fact they are persecuted and discriminated by the occupying authorities on the basis of their nationality, religion and language.

# **The economic and social situation of internally displaced persons**

Despite the fact that mass accommodation centres for IDPs are becoming (alongside increasingly lengthy resettlement periods) less and less appropriate, many people are forced to stay there, as they cannot afford to rent a flat. Furthermore, they have often been established in facilities used for other purposes, such as centres for homeless persons, care facilities for elderly or holiday resorts. Therefore, living conditions in these centres are inappropriate; furthermore, many of them are located in remote places and their residents have difficulty in accessing healthcare, education or the labour market.

A major problem facing many IDPs is the lack of social and economic security, which contributes to uncertainty and makes them look for another place to live, often abroad, or to return to the area they fled. Moreover, due to the difficulties on the labour market and housing problems, men often report to military services, as this might be the only available source of income for them.

Many IDPs from the Donbas region, who had previously been working in heavy industry or in the mining sector, were sent to rural regions, where other employment skills are needed. Therefore, they often agree to undertake jobs at a lower level and to receive less compensation than before. However, it sometimes happens that employees, whose professional profiles or salary expectations differ from the job offered, refuse to accept it. This is particularly true with regard to people at tertiary education level, who were offered inferior and poorly-paid jobs. Moreover, as a side effect, IDPs are perceived as those who would rather live on government allowances than work.

In turn, many IDPs are convinced that their status hampers their employment opportunities, mainly because they are expected to stay only temporarily within the territory controlled by the government. Sometimes employers want to offset the risk involved with investing in an employee who may soon quit his/her job and offer him/her much less than they would if they opted for a local employee.

Formally, IDPs are entitled to social security measures on equal terms with all Ukrainian citizens. However, this entitlement has, in fact, ceased to exist within the territories not controlled by the government, which – in turn – often resulted in displacements. On the other hand, those who – for a variety of reasons – did not leave the mutinous provinces are now not able to access government services, which negatively affects their financial condition. This is true in particular with regard to pensioners, as they have no means of subsistence. However, even those who fled from Donbas or Crimea and reside within the territories controlled by the government do not find it easy to apply for social benefits or run administrative errands, as the Ukrainian authorities do not recognise documents issued outside the territory under their control. Therefore, they have to face the cumbersome procedures followed by the Ukrainian authorities, while certifying documents issued within a territory outside their control, not only in order to receive old-age pension or social benefits, but also, for example, in order to recognise a birth certificate or deal with a succession case. In addition, there are problems with accessing bank accounts opened within the mutinous provinces, which not only hinders access to funds to finance current expenditure, but also makes it impossible to repay loans.

# **Specific problems**

Displacements often resulted in separation and in breaking down family and social relationships. The groups particularly affected are children separated from their families, families abandoned by men in which the women had to take over the men’s duties, as well as lone older people. At the same time, the IDPs separated from their families or friends and deprived of social support are particularly exposed to the adversities of everyday life, as they feel that their fate is unclear due to the prolonged situation of uncertainty connected with their new place of residence.

Furthermore, many IDPs from the Donbas area are concerned about whether they will be accepted by the local community and whether they will be able to re-integrate into it following their return. Some of them fear that they would be considered to be traitors, who left their families and friends at the mercy of the rebels in order to look for a prosperous and peaceful life in the government-controlled areas. Others, by contrast, may feel uncomfortable, awaiting family condemnation for siding with the Ukrainians fighting with the Russian aggressor, to which the rest of the family feels connected.

It is not completely safe to cross a line between government-controlled areas and those areas that are not under the control of the government. This poses a threat to the lives of people who are trapped in the conflict zone; yet even when the shooting ceases, it is very onerous to cross the line. The number of checkpoints is limited and people often have to travel long distances in order to reach them. Furthermore, the queues of people waiting to cross the dividing line are very long. In turn, any attempt to cross the line elsewhere is risky, as there are mines and duds. Some IDPs have settled far away from the dividing line, yet many others live in its vicinity. The restrictions on the freedom of movement, and the need to obtain authorisation in order to be able to cross the line, pose a serious challenge that affects their daily lives. These problems not only make it difficult to travel to places where people lived before the conflict in order to assess the situation, provide support to their families or recover their property, but they also negatively impact relationships between family members and their unity, which may seriously hamper safe and voluntary return in the future.

Insecure, unstable and poorly-paid jobs, as well as late payments of wages increase the risk of IDPs becoming victims of trafficking in human beings. It is highly probable that IDPs will be entangled in informal and illegal employment that is devoid of any protection. This is particularly true with regard to women, as they represent a majority of adult IDPs who are fit for work and who are not engaged in the fighting.

The information policy, especially the Russian one, often uses a term that is misleading and which makes Russia not responsible for the conflict: the "Ukrainian civil war". The term "hybrid war" that is used by some members of the international and Ukrainian community, makes the situation more complicated, rather than explaining it. The Ukrainian people living in the government-controlled territory consider the role of both active and passive residents of the Donbas area to be hostile in the light of an undeclared war against Ukraine that involves Russian weapons and paramilitary forces. The Ukrainian people view the war differently depending on where they live, yet most of them agree that this is a foreign aggression in which the local population in the East, financed and manipulated by Russia, plays an important part. Therefore, taking account of the calls to react to the aggression, those fleeing the Donbas region are often perceived ambiguously: some view them as victims of the conflict, while others view them as those who have fled the battlefield.

# **The relationship between IDPs and the local population**

Internally displaced persons can count on public assistance of a, more or less, organised nature, which is, nevertheless, generally insufficient due to financial restrictions. However, various non-governmental organisations and churches also give assistance, providing an example of how to support the local population on an on-going basis by offering free accommodation, food, clothes or children's toys. In the area directly affected by the conflict, those fleeing it often moved to neighbouring villages in order to find shelter from gunfire there; the villagers generally understood and felt compassion for them. However, over time, the local populations in the areas that received IDPs, both adjacent to the conflict areas and further inland, started to become indifferent and frustrated with them. IDPs are becoming more and more aware of the fact that they are viewed as a burden upon the locals.

People were sceptical about the support provided to IDPs due to the deterioration in the country’s economic situation and the need to grant financial assistance to the wounded and demobilised troops. The change in the attitudes of local populations coincided with the arrivals of new IDP groups that were caused by the upsurge in fighting in the Donbas area. That is why many IDPs prefer not to stick out and to blend in with the community.

Host communities witness both a fall in jobs across the key sectors of the economy due to the conflict and an increase in rents that has resulted from an increased demand for apartments to rent. Increased competition on the labour market is yet another effect of a larger number of potential employees. Not only do rents increase, but other charges also increase. The overall cost of living is higher, which is attributed to the flood of IDPs and obviously creates tensions. It is often the case that landlords refuse to rent flats to IDPs or they demand that the rent be paid for the whole year in advance. There is evidence that landlords cancelled rental agreements after it turned out that the apartments would be rented by IDPs.

Due to ethnic, cultural and religious differences, the problems affecting the Tatars resettled from Crimea are of a specific nature. However, despite some problems, local populations in other parts of Ukraine are, in general, friendly and eager to help them. One reason behind such attitudes is that the Tatars are clearly a minority everywhere; they do not compete with the locals, especially as they are resettled in scattered locations. Another reason is that they are, unarguably, hostile towards the Russian occupation, which might not be that evident in the case of other groups comprising the Crimea population, especially the Russian-speaking population, who are clearly a majority there. Furthermore, Crimean Tatars are seen in the context of their tragic history and the deportations that took place in 1944. Despite such positive attitudes, these IDPs also encounter problems as a result of their dispersal. This makes it difficult to provide education in the Tatar language and results in a lack of places for worship and burial. It also forces people to travel very long distances to reach the nearest mosque. Furthermore, Crimean Tatars complain that they are less able to reunite with the family members who remained in Crimea and that, as a result, they cannot participate in family celebrations that are very important to them.

# **Conclusions**

* Internally displaced persons should have the same rights and living conditions and should enjoy the same opportunities to participate in civil, political and cultural activities as the local population. This requires not only adequate financing and determination on the part of the authorities, but also cooperation with the broader world of organised civil society.
* In particular, it is important to ensure equal treatment of IDPs with regard to access to accommodation, employment and social security. This is a prerequisite for their integration with local communities.
* It is necessary to take steps in order to reunite families, rebuild the social fabric, restore mutual trust and eliminate prejudices towards IDPs. Civil society can play a key role in these processes.
* It is necessary to prepare the ground for the safe return of the IDPs at the appropriate time, in order to allow them to successfully reconcile with, and re-integrate into, their original community.
* Restrictions on the movement of civilians between the government-controlled zones and the zones that are not under the control of the government should be gradually lifted and should not make it excessively or unjustifiably difficult for the IDPs to cross the dividing line or prevent those wishing to return from doing so.
* Russia is clearly responsible for the outbreak of the conflict and for subversive and false propaganda aimed at manipulating the inhabitants of eastern Ukraine and Crimea. That is why it bears substantial responsibility for ensuring the security of the citizens within these territories. This applies both to those who remained there and to those returning to their homeland and wanting to live their lives in peace.